7164W

28 24

No. 05-908 and 05-915

FILED
OCT 10 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioners,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *ET AL.*,
Respondents,

CRYSTAL D. MEREDITH, CUSTODIAL PARENT
AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioners,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *ET AL.*
Respondents,

On Writs Of Certiorari to the United States Courts of Appeals for the Ninth and Sixth Circuits

---

BRIEF AMICI CURIAE OF THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, CHINESE FOR AFFIRMATIVE ACTION, ET AL., IN SUPPORT OF RESPONDENTS

KENNETH KIMERLING
KHIN MAI AUNG
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, New York 10013
Tel.: (212) 966-5932

MARC WOLINSKY*
RICHARD K. KIM
NELSON O. FITTS
JAMES R. LEVINE
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
Tel.: (212) 403-1000
Counsel of Record

[Additional Amici listed on following page]

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20001

ADDITIONAL AMICI

Asian Americans United
Asian Pacific Islander Legal Outreach
Asian Pacific Islander Youth Promoting Advocacy and Leadership
Boston Asian Youth Essential Service
Cambodian Association of Greater Philadelphia
Coalition for Asian American Children and Families
Coalition for Asian Pacific American Youth
Detroit Asian Youth Project
Filipinos for Affirmative Action
Japanese Community Youth Council
One Lowell
Providence Youth Student Movement
South Asian Youth Action!
United Chinese Association of Brooklyn

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. ASIAN AMERICANS ARE COMPRISED OF DIVERSE SEGMENTS WITH WIDELY VARYING MEDIAN LEVELS OF EDUCATIONAL ACHIEVEMENT AND SOCIO-ECONOMIC STATUS 6

II. THE BENEFITS OF A DIVERSE CLASSROOM EXTEND TO ALL RACIAL GROUPS—INCLUDING ASIAN AMERICANS 11

A. Integration Can Reduce School Violence and Harassment 13

B. Integration Leads to Greater Understanding and Tolerance 16

C. Integration Fosters Greater Educational Access and Improvements in Academic Achievements 21

III. LOCAL SCHOOL BOARDS SHOULD BE VESTED WITH BROAD DISCRETION TO PROMOTE INTEGRATION THROUGH RACE CONSCIOUS SCHOOL ASSIGNMENT POLICIES TAILORED TO THEIR COMMUNITIES AND BUDGETS. 25

IV. CONCLUSION 28

APPENDIX A-1

TABLE OF AUTHORITIES

Cases **Page**

Brown v. *Board of Education*, 347 U.S. 483 (1954) 11, 12, 21

Grutter v. *Bollinger*, 539 U.S. 306 (2003) 11-12

Parents Involved in Community Schools v. Seattle School District No. 1, 426 F.3d 1162 (9th Cir. 2005) (Kozinski, J., concurring) 27

Washington v. Seattle School District No. 1, 458 U.S. 457 (1982) 16-17

Other Authorities

Ana Arana, *A New Crowd in the City: Indian, Pakistani Kids Threaten Community's 'Perfect' Image*, The Village Voice, Feb. 24, 1998, *available at* http://www.xent.com/feb98/0361.html 14

Ann Mullen, *Reform School Lessons*, Metro Times, Oct. 20, 1999, *available at* http://www.metrotimes.com/20/03/Metrobeat/metrobet.html. 20

Asian Pacific American Legal Center of Southern California, Asian Law Caucus & National Asian Pacific American Legal Consortium, *The Diverse Face of Asians and Pacific Islanders in California, Asian & Pacific Islander Demographic Profile* (2005), *available at* http://www.apalc.org/CA_Report_feb_%202_05.pdf 9, 10

Gary Orfield, The Civil Rights Project at Harvard University, *Schools More Separate: Consequences of a Decade of Resegregation* (2001), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf. 22

Gary Orfield & Chungmei Lee, The Civil Rights Project at Harvard University, *Racial Transformation and the Changing Nature of Segregation* (2006), *available at* http:www.civilrightsproject.harvard.edu/research/deseg/Racial_Transformation.pdf. 21-22

Heather Kim, *Diversity Among Asian American High School Students* (1997) 7

Kamla Bhatt, *Alone in the Crowd*, Outlook, Oct. 1, 2001, *available at* http://www.sree.net/quotes/outlookbacklash.html 14

Margaret M. Chung, National Association of Social Workers, *Intergenerational Effects of Genocidal Disaster among Cambodian Youth*, (Dec. 2000), *available at* http://www.naswnyc.org/di6.html 23

Michael J. Anderson, *Race as a Factor in K-12 Student Assignment Plans: Balancing the Promise of* Brown *with the Modern Realities of Strict Scrutiny*, 54 Cath. U.L. Rev. 961 (2005). 12

Note, *Perpetuating the Exclusion of Asian Americans from the Affirmative Action Debate: An Oversight of the Diversity Rationale in Grutter v. Bollinger*, 38 U.C. Davis L. Rev. 545 (2005). 8

Noy Thrupkaew, *The Myth of the Model Minority*, The American Prospect, Apr. 8, 2002, *available at* http://www.prospect.org/print/V13/7/thrupkaew-n.html. 7

Paul Watanabe, Michael Liu & Shauna Lo, The Civil Rights Project at Harvard University, *Asian Americans in Metro Boston: Growth, Diversity, and Complexity* (2004), *available at* http://www.civilrightsproject.harvard.edu/research/metro/AAMetBos.pdf 10

Posting of Ed Brayton, *Why Teacher's Unions Are Hurting Education*, http://positiveliberty.com/2005/08/why-teachers-unions-are-hurting-education.html (Aug. 29, 2005, 10:16 EST).....20

PTSD, Depression Epidemic Among Cambodian Immigrants, NIH News (National Institutes of Health, Bethesda, Md.), Aug. 2, 2005, *available at* http://www.nih.gov/news/pr/aug2005/nimh-02b.htm 23

Pyong Gap Min and Mehdi Bozorgmehr, *Immigrant Entrepreneurship in the United States: Trends, Research and Theory, in Venturing Abroad: Global Processes and National Particularities of Immigrant Entrepreneurship in Advanced Economies 5* (Robert Kloosterman & Jan Rath eds., 2002), *available at* http://www.aoef.org/papers/2002/bozorgmehr_1.doc 7

Southeast Asia Resource Action Center, *Southeast Asian American Statistical Profile* (2004), *available at* http//www.searac.org/seastatprofilemay04.pdf 10

The Coalition for Asian American Children and Families, *Hidden in Plain View: An Overview of the Needs of Asian American Students in the Public School System* (2004), *available at* http://www.cacf.org/PDF/Hidden%20in%20Plain%20View.pdf 11

The Disparities Project, Boston Public Health Commission, *Data Report: A Presentation and Analysis of Disparities in Boston* (2d ed. 2005), *available at* http://www.bphc.org/director/pdfs/datareport/datareport.pdf 13

The Harvard Youth Violence Prevention Center, *Report of the 2004 Boston Youth Survey* (2005), *available at* http://www.hsph.harvard.edu/hyvpc/images/2004BYSfullreport.pdf 13

INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.3, the Asian American Legal Defense and Education Fund, Asian Americans United, Asian Pacific Islander Legal Outreach, Asian Pacific Islander Youth Promoting Advocacy and Leadership, Boston Asian Youth Essential Service, Cambodian Association of Greater Philadelphia, Chinese for Affirmative Action, Coalition for Asian American Children and Families, Coalition for Asian Pacific American Youth, Detroit Asian Youth Project, Filipinos for Affirmative Action, Japanese Community Youth Council, One Lowell, Providence Youth Student Movement, South Asian Youth Action!, and United Chinese Association of Brooklyn, submit this brief *Amici Curiae* in support of the Respondents in the pending cases of *Meredith* v. *Jefferson County Board of Education, et al.* and *Parents Involved in Community Schools* v. *Seattle School District No. 1*.[1] Attached in the Appendix is a complete list of each *Amici's* statement of interest in this matter. All of the parties have consented to the filing of this brief.

All of the *Amici* groups are nonprofit organizations whose mission is to advocate on behalf of and/or provide direct services to Asian American communities in various jurisdictions across the United States. The geographic areas in which the *Amici* groups work are a broad and representative cross-section of Asian American communities. San Francisco and Oakland are home to one of the country's oldest and most established Asian

---

[1] Pursuant to Rule 37.6, *Amici* affirm that no counsel for any party authored this brief in whole or in part and that no person made a monetary contribution specifically for the preparation or submission of this brief.

American populations—from Chinese and Japanese who are third and fourth generation Americans to new immigrants from across Asia. Similarly, New York City houses a diverse and longstanding Asian American population--ranging from Chinese and Koreans to Indians and Bangladeshis. The greater Boston area, Providence and Philadelphia have significant communities of Southeast Asian refugees who face unique challenges in achieving educational equity. Finally, Detroit is home to an emerging enclave of Hmong Americans that has grown in size and presence only in recent years.

The *Amici* groups dedicate significant time and effort to kindergarten through twelfth grade public educational advocacy issues, including addressing problems rooted in a lack of meaningful racial and ethnic diversity. The *Amici* groups work on a broad range of social and political issues, such as dropout/pushout, gang profiling, post-9/11 terrorist profiling, discrimination and harassment impacting diverse Asian American communities. Many of these groups work directly with Asian American youth experiencing difficulty accessing public education and victims of discrimination and racially-based harassment.

Based on their direct experience, the *Amici* groups believe that they are well qualified to weigh in on the question that is before the Court in these cases—whether the school assignment plans considered in *Meredith* and *Parents* are consistent with the Equal Protection Clause of the Fourteenth Amendment. From their direct experience, the *Amici* groups submit that racially integrated and diverse kindergarten through twelfth grade public education systems profoundly benefit Asian American children—along with children of other races. The *Amici* groups further submit that the Court should affirm that a school district's *voluntary* use of race as a factor in a school

districting plan serves a compelling governmental interest consistent with the Constitution's Fourteenth Amendment, a compelling interest that would best be served by affording school districts with broad discretion in tailoring plans that meet their individualized needs. If the Court were to bar school districts from using race as a factor in student assignment plans or create impractical hurdles to the implementation of such plans, Asian American children would be materially harmed. Accordingly, *Amici* respectfully request that the Court rule in favor of the Respondents.

SUMMARY OF ARGUMENT

Asian Americans are commonly misperceived as a homogenous "model minority," with high incomes and an absence of barriers to educational attainment. In reality, the Asian American population is markedly diverse with over 40 ethnic groups with distinct histories and needs. While some segments of Asian Americans have access to a quality education, many others do not. However, all Asian Americans across ethnicities reap benefits from integrated public schools.

Based on the experience of the *Amici* groups, Asian American children benefit from a diverse academic environment in at least three distinct ways. *First*, the *Amici* groups have found that integration can lead to meaningful reductions in school violence and harassment, which holds particular benefits for Asian American students. *Second*, all Asian American children benefit from developing greater understanding and tolerance of other racial and ethnic groups at integrated schools and from these groups likewise gaining greater understanding and tolerance of them. *Third*, some segments of Asian Americans gain greater educational access and improvements in academic achievements from integrated educational environments, just as African American and Latino American children do.

Among the arguments advanced by the Petitioners in support of reversal is the claim that the school assignment plans at issue are overly simplistic and do not provide for an individualized holistic review of each student. Through their work, the *Amici* organizations are well aware of the budgetary pressures that many school districts face – which are far more severe than those facing elite law schools. The *Amici* organizations believe that for a school assignment plan to succeed, it is imperative that local school boards be vested with broad discretion in the

school assignment process. School districts have different levels of funding and resources available to them, and consequently they are in unique positions to evaluate the feasibility of student assignment plans. Moreover, Asian Americans encompass a broad range of ethnicities, with widely different traits and educational needs. Accordingly, a school assignment plan that works for one city may not work for another.

For these reasons, the *Amici* organizations respectfully request that the Court rule in favor of the Respondents and affirm the decisions of the Courts of Appeals.

ARGUMENT

I. ASIAN AMERICANS ARE COMPRISED OF DIVERSE SEGMENTS WITH WIDELY VARYING MEDIAN LEVELS OF EDUCATIONAL ACHIEVEMENT AND SOCIO-ECONOMIC STATUS.

There is a common misconception that Asian and Pacific Islander Americans[2] constitute a homogenous "model minority," sharing a common identity distinguished by high incomes and an absence of barriers to educational attainment. Based on this misconception, one might conclude that Asian Americans would not benefit if school districts were permitted to consider race in the school assignment process, or even that they would suffer a detriment. In reality, the Asian and Pacific Islander American population is markedly diverse and comprised of over 40 ethnic groups with distinct histories and needs. Moreover, a closer and more accurate understanding of the Asian and Pacific Islander American population reveals alarming gaps in socio-economic status, equal opportunities and educational equity.

Some *Amici* work with a particular Asian American community (e.g., Chinese, Filipino) or with communities

---

[2] While *Amici* submit this brief from their perspective as organizations serving Asian American communities, *Amici* speak with solidarity for and an awareness of Pacific Islander communities who are often mingled with Asian Americans for statistical purposes. We will present some statistical information about Pacific Islanders to highlight differences between the diverse constituencies commonly lumped together under an aggregated Asian and Pacific Islander data category, but will limit the focus of our brief to Asian American students, parents, and communities.

from a specific geographic subregion of Asia (e.g., Southeast Asians or South Asians), while others work with Asian Americans from all backgrounds. Southeast Asians include those Americans with ancestry from Brunei, Cambodia, East Timor, Singapore, Indonesia, Malaysia, Laos, Myanmar, Thailand and Vietnam. A sizable number of Southeast Asians in the United States are refugees with origins in Cambodia, Laos and Vietnam, including ethnic subgroups like Hmong and Mien. South Asians include those Americans with origins in Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka. Other Asian ethnic groups include Chinese, Filipinos, Koreans and Japanese. Each of these groups has unique cultural traits, and median educational and socio-economic levels can differ dramatically among them.

For example, a sizable percentage of Indian or Taiwanese immigrants hail from middle class backgrounds in their countries of origin, which translates into higher occupation status and educational outcomes for their children.[3] By contrast, many Southeast Asian refugees hail from working class backgrounds and are less likely to have college educations and hold lower occupational status.[4] According to preliminary results from a 2006 community-

---

[3] Pyong Gap Min & Mehdi Bozorgmehr, *Immigrant Entrepreneurship in the United States: Trends, Research and Theory, in Venturing Abroad: Global Processes and National Particularities of Immigrant Entrepreneurship in Advanced Economies* 5 (Robert Kloosterman and Jan Rath eds., 2002), *available at* http://www.aoef.org/papers/2002/bozorgmehr_1.doc.

[4] Noy Thrupkaew, *The Myth of the Model Minority*, The American Prospect, Apr. 8, 2002, *available at* http://www.prospect.org/print/V13/7/thrupkaew-n.html; Heather Kim, *Diversity Among Asian American High School Students* (1997).

based survey by *Amici* Providence Youth Student Movement (PrYSM), six out of ten Southeast Asian youth polled in Providence believe that a high school diploma would be the highest level of education achieved in their lifetime.[5] The socio-economic positions of Southeast Asian Americans are more similar to those of African Americans than to White Americans.[6] An additional variable relating to educational needs is whether Asian Americans are native-born or foreign-born. In general, Asian Americans born in the United States tend to have greater educational advantages than those born outside the United States.

California presents a prime example of how aggregated data regarding Asian Americans can be misleading. Although overall state data suggest that California Asian Americans are above average in household incomes and educational attainment, the data are skewed by ethnic differences. For example, household incomes for Asian American families are inflated by their larger than average household size. Asian households tend to be larger than those of other racial groups, frequently including extended family members. In California, 20% of Pacific Islander households have three or more workers, as do 18% of Asian American households overall. By contrast, only 10% of White households and 9% of African American households in California fall within this category.

---

[5] Statement of Kohei Ishihara, Executive Director, Providence Youth Student Movement.

[6] Note, *Perpetuating the Exclusion of Asian Americans from the Affirmative Action Debate: An Oversight of the Diversity Rationale in Grutter v. Bollinger*, 38 U.C. Davis L. Rev. 545 (2005).

Per capita income tells a different story—in California, the per capita income of Asian Americans falls below the median, with some segments falling substantially below the median. Similarly, 13% of Asian Americans in California fall below the Federal poverty line, compared to 8% of Whites. In addition, when the data are disaggregated by ethnicity, it becomes clear that wide chasms exist in the educational attainment of, and available opportunities for, different Asian American populations. A startling 53% of all Hmong in California fall below the Federal poverty line; 40% of Cambodians, 32% of Laotians, 20% of Samoans, 18% of Pakistani and 18% of Vietnamese fall below that line as well.[7]

As noted, language barriers cause further hardships and barriers to educational equity for many non-native born Asian Americans and their children. For example, according to the 2000 Census, the percentage of Asian Americans nationwide who are "linguistically isolated"[8] is approximately 24.7%. For some segments of Asian Americans, the percentage is significantly higher:

- Cambodian – 31.8%;
- Vietnamese – 45.0%;
- Hmong – 35.1%; and

---

[7] Asian Pacific American Legal Center of Southern California, Asian Law Caucus & National Asian Pacific American Legal Consortium, *The Diverse Face of Asians and Pacific Islanders in California, Asian & Pacific Islander Demographic Profile* (2005), *available at* http://www.apalc.org/CA_Report_feb_%202_05.pdf.

[8] "Linguistically isolated" means that no member of the household who is at least 14 years old either speaks only English or speaks a non-English language and speaks English very well.

- Laotian – 31.8%.[9]

In California, Asian households experience higher levels of linguistic isolation than any other racial group. Overall, more than a third of Asian Americans and more than a fifth of Asian American children have limited English proficiency. A majority of six Asian ethnic groups are also limited English proficient, including two of the state's five largest groups, Vietnamese and Korean. Nearly a majority of Chinese, the state's largest Asian group, are limited English proficient.[10]

Such contrasts between different segments of the Asian American population are equally evident in other geographic areas. In 2000 in the greater Boston area, the percentage of Asian Americans with less than a ninth grade education was over twice that of the general population. At the same time, the percentage of greater Boston Asian Americans with graduate or professional degrees was also more than twice that of the general population.[11] Similarly, although New York City Asian Americans have a higher than average median household income, almost a quarter of

---

[9] Southeast Asia Resource Action Center, *Southeast Asian American Statistical Profile* (2004), *available at* http//www.searac.org/seastatprofilemay04.pdf.

[10] Asian Pacific American Legal Center of Southern California, Asian Law Caucus & National Asian Pacific American Legal Consortium, *The Diverse Face of Asians and Pacific Islanders in California, Asian & Pacific Islander Demographic Profile* (2005), *available at* http://www.apalc.org/CA_Report_feb_%202_05.pdf.

[11] Paul Watanabe, Michael Liu & Shauna Lo, The Civil Rights Project at Harvard University, *Asian Americans in Metro Boston: Growth, Diversity, and Complexity* 18 (2004), *available at* http://www.civilrightsproject.harvard.edu/research/metro/AAMetBos.pdf.

the city's Asian American children live in poverty and 82% of its Asian American elementary and middle school children are eligible for free or reduced price lunch.[12]

Because of these diverse socio-economic conditions, the needs of Asian American and Pacific Islands students and parents vary significantly by ethnicity, and while some segments of the Asian American student population have access to a quality education, many others do not. As set forth below, however, Asian Americans across all ethnicities reap benefits from integrated public schools.

II. THE BENEFITS OF A DIVERSE CLASSROOM EXTEND TO ALL RACIAL GROUPS—INCLUDING ASIAN AMERICANS.

The Court has acknowledged the importance of diversity in the academic setting, particularly during the early formative years. In the landmark case of *Brown* v. *Board of Education*, the Court noted that education is a "principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." 347 U.S. 483, 493 (1954). More recently, in 2003, Justice Scalia recognized in *Grutter* v. *Bollinger* that teaching tolerance and respect for others with different backgrounds "is a lesson of life rather than law—essentially the same lesson taught to (or rather learned by, for it cannot be 'taught' in the usual sense) people three feet shorter and

---

[12] The Coalition for Asian American Children and Families, *Hidden in Plain View: An Overview of the Needs of Asian American Students in the Public School System* 9 (2004), *available at* http://www.cacf.org/PDF/Hidden%20in%20Plain%20View.pdf.

twenty years younger than the full grown adults at the University of Michigan Law School, in institutions ranging from Boy Scout troops to public-school kindergartens." 539 U.S. 306, 347 (2003) (Scalia, J., dissenting).

The *Amici* groups believe that public schools are vitally important institutions for shaping attitudes towards those of different races and ethnicities. The need for exposure to other races is particularly urgent in elementary and secondary schools, as the benefits of cross-racial interaction are most profound at younger ages.[13] Hence, a diverse classroom is critical to the development of views of racial equality. Indeed, the Court's observations in *Brown* v. *Board of Education* and its progeny are as valid today as at the time they were first made, and they apply to all children, regardless of race or ethnicity.

Based on the experience of the *Amici* groups, Asian American children benefit from a diverse academic environment in at least three distinct ways. *First*, the *Amici* groups have found that integration can lead to meaningful reductions in school violence and harassment, which holds particular benefits for Asian American students. *Second*, all Asian American children benefit from developing greater understanding and tolerance of other racial and ethnic groups at integrated schools and from these groups likewise gaining greater understanding and tolerance of them. *Third*, some segments of Asian Americans gain greater educational access and improvements in academic achievements from integrated educational environments,

---

[13] Michael J. Anderson, *Race as a Factor in K-12 Student Assignment Plans: Balancing the Promise of* Brown *with the Modern Realities of Strict Scrutiny*, 54 Cath. U.L. Rev. 961, 987-88 (2005).

just as African American and Latino American children do. Each of these points is discussed below.

A. Integration Can Reduce School Violence and Harassment

Harassment in school is a *bona fide* problem for Asian American students. In a 2004 survey, Asian American youth were more likely than any other group to report being bullied, harassed or assaulted due to their race.[14] According to a report by the Boston Public Health Commission, Asian American high school students in Boston are 80% more likely than White students to miss school because they feel unsafe.[15] In Providence, student dropouts attending *Amici* PrYSM's General Educational Development program report that one reason for leaving school – in addition to the need to work for income – was lack of personal safety due to intimidation and threats of gang violence.[16]

According to Vanessa Leung of the *Amici* New York-based Coalition for Asian American Children & Families:

> When social interaction is limited to one's own social groups, there is a danger of a lack of mutual

---

[14] See The Harvard Youth Violence Prevention Center, *Report of the 2004 Boston Youth Survey* (2005), *available at* http://www.hsph.harvard.edu/hyvpc/images/2004BYSfullreport.pdf.

[15] See The Disparities Project, Boston Public Health Commission, *Data Report: A Presentation and Analysis of Disparities in Boston* 44 (2d ed. 2005), *available at* http://www.bphc.org/director/pdfs/datareport/datareport.pdf.

[16] Statement of Kohei Ishihara, Executive Director of the Providence Youth Student Movement.

> understanding and growing mistrust of other groups, especially when students are not equipped with the skills and tools to increase that understanding. Mutual misunderstanding and segregation may promote feelings of in- and out-group identification that can result in vulnerable students being targeted for harassment. [17]

Harassment not only results in poor school attendance, but can also prompt Asian American youth to band together for protection. For example, South Asian youth in the New York City metropolitan area increasingly seek refuge in loose ethnic networks – which are often mistakenly profiled as criminal "gangs" due to factors such as a sense of disaffection from their culture and the American culture and racial harassment from their peers.[18]

Harassment of Asian Americans in many areas has worsened in recent years in part due to a misguided backlash to the World Trade Center attacks on September 11, 2001. Since September 11, South Asians have experienced anti-immigrant and anti-foreign sentiment in the form of hateful speech and violence, even in cosmopolitan areas such as the Bay Area and New York.[19] The impact has been particularly severe on New York-based South Asians and Muslims.

---

[17] Interview with Vanessa S. Leung, Education Policy and Program Coordinator, Coalition for Asian American Children & Families (Sept. 28, 2006).

[18] Ana Arana, *A New Crowd in the City: Indian, Pakistani Kids Threaten Community's 'Perfect' Image*, The Village Voice, Feb. 24, 1998, *available at* http://www.xent.com/feb98/0361.html.

[19] See Kamla Bhatt, *Alone in the Crowd*, Outlook, Oct. 1, 2001, *available at* http://www.sree.net/quotes/outlookbacklash.html.

The *Amici* organizations find that diversity in the classroom breaks class stereotypes and fosters cross-racial friendships, which help in curbing race-based harassment of Asian American students. The Asian American Legal Defense and Education Fund (AALDEF) and the United Chinese Association of Brooklyn (UCA) together organize and advocate for the immigrant Asian youth of Bensonhurst, Brooklyn. Many of these youth attend Lafayette High School, which is under an unprecedented United States Department of Justice civil rights consent decree due to repeated incidents of racialized anti-Asian harassment and problems in administration of its English Language Learner program. Immigrant Asian students have reported to AALDEF and UCA that racial tensions are more likely to erupt at their school when different racial groups are unfamiliar with each other and abruptly brought together for the first time.

By contrast, AALDEF and UCA have found their youth constituents more likely to develop cross-racial friendships and become less vulnerable to harassment after attending school in a diverse environment for a few years. Rita Zeng, a 2006 graduate of Lafayette High School and an intern at AALDEF, reports that although she felt vulnerable to harassment when she first emigrated from China and enrolled at Lafayette, over time she developed cross-racial friendships and began to feel safer.[20] Lafayette student Kwan Wa Shum observes that racialized harassment against Asian immigrant students occurs because students do not understand the newcomers' culture

---

[20] Interview with Rita Zeng, Lafayette High School graduate (Sept. 29, 2006).

or practices due to lack of exposure.[21] Qi Ping Li, another Lafayette student, reports that after having attended the school for some time, she has become friendlier with non-Asian students, who sometimes now ask her to teach them words in Chinese.[22] The students collectively report that language barriers can lead to misunderstandings for immigrant Asians and others alike, but that, with prolonged exposure, all students – newcomers and others alike – are more aware of the potential for misunderstanding and likely to be more tolerant.[23]

Amici South Asian Youth Action! (SAYA), based in New York, reports similar findings. After conducting "Project Unity", a summer project that SAYA developed to bring diverse students together after September 11, SAYA found that students who participated developed multi-racial friendships and a greater acceptance and understanding of students from other ethnic groups when given the opportunity to interact with each other. Based on its work, SAYA believes that the relative lack of diversity and effort to integrate students in the New York City school system serves to perpetuate racial stereotypes and harassment.

B. Integration Leads to Greater Understanding and Tolerance

The Court noted in *Washington* v. *Seattle School District No. 1* that when a child's environment is "largely shaped by members of different racial and cultural groups,

---

[21] Interview with Kwan Wa Shum, Lafayette High School student (Oct. 7, 2006).

[22] Interview with Qi Ping Li, Lafayette High School student (Oct. 7, 2006).

[23] Interviews with Jian Rong Peng, Kelvin Liang, Kwan Wa Shum, & Qi Ping Li, Lafayette High School students (Oct. 7, 2006).

minority children can achieve their full measure of success only if they learn to function in—and are fully accepted by—the larger community. Attending an ethnically diverse school may help accomplish this goal by preparing minority children 'for citizenship in our pluralistic society,' while, we may hope, teaching members of the racial majority 'to live in harmony and mutual respect' with children of minority heritage."[24] The *Amici* groups believe that the ability to function in a diverse environment, be it in school or in business, is extraordinarily important to a child's success.

Again, the experience of one of the *Amici* groups, the Chinese for Affirmative Action (CAA), bears this out. CAA represents a broad cross-section of San Francisco's Asian American and Chinese American students—in particular, lower income Chinese American students. CAA maintains an office in the southeast area of San Francisco known as Visitacion Valley. Visitacion Valley—previously populated largely by African American residents—has recently experienced a dramatic increase of primarily immigrant Chinese and other Asian residents, resulting in frequent conflicts. CAA has long focused on education, working with a broad range of community members, parents and community groups to inform and educate the San Francisco Unified School District (SFUSD) about the educational needs of Chinese students, especially those who are limited English proficient and economically disadvantaged.

Based on its extensive work with San Francisco's Chinese American community, particularly in the area of education, CAA places a high premium on the value of

---

[24] 458 U.S. 457, 472-473 (1982) (citations omitted).

integrated schools. Christina Wong is a policy advocate with CAA and has worked for the past eight years advocating for the rights and needs of low-income, limited English proficient Asian American parents and students. She observed the following:

> It has become increasingly apparent that racial diversity is an essential component to quality education and should be a core value of every school district. In many schools in SFUSD, students are not equipped to work in collaboration with other ethnic groups. I have also observed the need for English Learners to be in a diverse setting so that their English language skills are enhanced at a faster rate. English Learners who are isolated within their own language groups do not have the opportunity to receive the benefits of English speakers as their English language models.
>
> A race conscious student assignment plan would at the very least provide an initial opportunity for students to be in a racially diverse environment. In order to establish a diverse learning environment, race must be a factor in the student assignment process.[25]

The benefits of integrated schools are further evidenced by the following commentary of Cindy Choi, a resident of Visitacion Valley and a CAA volunteer. Ms. Choi serves as an outreach worker for the San Francisco Parents for Public Schools, an organization dedicated to improving public schools in San Francisco, and also serves on the San Francisco Unified School District's Parent

---

[25] Statement of Christina Wong, Policy Advocate, Chinese for Affirmative Action.

Advisory Council and on the District English Learner Advisory Council:

> I immigrated from Hong Kong to San Francisco five years ago with my family. My daughter attends El Dorado Elementary School in Visitacion Valley. It would be easy to have my only daughter go to a school with a majority of Chinese students like herself, but that would not allow her to learn and benefit from other groups of people. The diversity has positively challenged her to be a strong and open minded youth who appreciates and values the differences of other ethnic groups.[26]

Students interviewed by the *Amici* groups also described how they benefit from diversity in the classroom. Ty Lee, a senior at Malden High School, a public high school located in Malden, Massachusetts, is a member of the Coalition for Asian and Pacific American Youth (CAPAY), a Boston-based youth group. She is of Vietnamese heritage and started Malden High School as a sophomore. Prior to attending Malden, she was a student at Everett High School, which had substantially less diversity. She makes the following observations about students of other races: "They are just like me, just the same. I feel more comfortable around them."[27] Similarly, Ty's classmate Vinh Nguyen, who is also Vietnamese American and also a member of CAPAY, observes "In school, I hang out with people from different races all around the school and I have a huge tolerance for everyone....I think diversity

---

[26] Statement of Cindy Choi, Volunteer, Chinese for Affirmative Action.

[27] Interview with Ty Lee, Malden High School student (Sept. 26, 2006).

has helped my outlook in life and view perspectives from everyone. [Diversity] helps give you an impression of the real world."[28]

Another *Amici* organization, the Detroit Asian Youth Project (DAY), reports similar findings. The Asian American student population in Detroit consists of mostly Hmong and Laotian youth. Because many of the Hmong and Laotian youth are the children of refugees or refugees themselves from Thai refugee camps, they arrived here in dire circumstances and continue to suffer from high levels of poverty. The Detroit public school system is currently in a state of crisis; an estimated 40-50% of students drop out every year.[29] In addition, the system is poorly integrated. Many Hmong youth have expressed to DAY Project staff that they have had significant problems with cross-racial relations. In contrast, in the neighboring city of Warren, there is more diversity and the school population has a more balanced mix of White, Asian, and African American students. As a result of this diversity, DAY Project staff Michelle Lin observes that Warren's school curriculum is more mixed, there are more extracurricular activities which represent its different ethnic populations, and students who attend Warren schools report that they have a better

---

[28] Interview with Vinh Nguyen, Malden High School student (Sept. 26, 2006).

[29] Ann Mullen, *Reform School Lessons,* Metro Times, Oct. 20, 1999, *available at* http://www.metrotimes.com/20/03/Metrobeat/metrobet.html (Detroit dropout rate improved slight from 43% in 1995 to 41.7% in 1998); Posting of Ed Brayton, *Why Teacher's Unions Are Hurting Education,* http://positiveliberty.com/2005/08/why-teachers-unions-are-hurting-education.html (Aug. 29, 2005, 10:16 EST)

understanding of and are more tolerant of students from other ethnic groups.[30]

C. Integration Fosters Greater Educational Access and Improvements in Academic Achievements

Over fifty years ago, the Court squarely addressed the issue of segregation in the public school system:

> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.[31]

In doing so, the Court recognized the harms caused by segregated public schools.

The Court's holding in *Brown* v. *Board of Education* has been further buttressed by decades of research not only confirming the harms of segregation, but also the benefits of integration. This research is discussed in detail in the Respondents' filings and in the other *Amicus Curiae* briefs and need not be repeated here. These considerations relate not only to reducing racial prejudice, which is discussed above, but also to the development of critical thinking and cognitive skills, levels of academic achievement and career ambitions and opportunities. [32]

---

[30] Statement of Michelle Lin, Director, Detroit Asian Youth Project.

[31] *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954).

[32] Gary Orfield & Chungmei Lee, The Civil Rights Project at Harvard University, *Racial Transformation and the Changing Nature of*

(footnote continued)

Conversely, racially segregated schools frequently have less qualified teachers, greater turnover of students and faculty, weaker academic curricula and greater incidences of violence.[33] One comprehensive study of the effects of resegregation summarizes the importance of integrated schools:

> A recent study of elite law schools shows, for example, that almost all of the black and Latino students who made it into those schools came from integrated educational backgrounds. Minority students with the same test scores tend to be much more successful in college if they attended interracial high schools.[34]

The greater Boston area illustrates some of the benefits of integrated schools. *Amici* One Lowell and AALDEF advocate for the educational access rights of Southeast Asian and other youths in Lowell, Massachusetts. Lowell is marked by a high concentration of Cambodians who fled their native country during the Khmer Rouge regime. In 2004, The National Institutes of Health determined that 62% of Cambodian refugees who had settled in the United States suffered from post traumatic stress disorder and 51% from depression within

---

(footnote continued)

Segregation (2006), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Racial_Transformation.pdf.

[33] *Id.*

[34] Gary Orfield, The Civil Rights Project at Harvard University, *Schools More Separate: Consequences of a Decade of Resegregation* 9 (2001), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Schools_More_Separate.pdf.

the past year.[35] These issues are compounded by the relative racial isolation in which Cambodians live in Lowell and have resulted in high levels of violence by disaffected youth and a public school system that has not adequately addressed the unique needs of this vulnerable population. In 1996, approximately 85% of the juvenile murders in Lowell were committed by Southeast Asian youth.[36]

Because the parents of Southeast Asian students in Lowell are generally not native born, they are often unaware of their children's right to a public education and to due process in the event of disciplinary or other problems. Moreover, because many of the parents are limited English proficient, they are unable to effectively voice their grievances. AALDEF has collected reports about difficulties such parents face in Lowell's elementary and middle schools, where school enrollment reflects the town's racially segregated residential patterns. As an example, in response to disciplinary incidents, security guards at middle schools are reported to unnecessarily provoke youth, leading to escalation of conflicts—and often, the doling out of harsher discipline. One parent reports that he withdrew his son from a school after a particularly severe disciplinary encounter. Greater integration in the Lowell elementary and middle schools would bring with it more parents who are aware of their rights and better able to seek redress when students are mistreated. This would result in better and fairer

---

[35] *PTSD, Depression Epidemic Among Cambodian Immigrants*, NIH News (National Institutes of Health, Bethesda, Md.), Aug. 2, 2005, *available at* http://www.nih.gov/news/pr/aug2005/nimh-02b.htm.

[36] See Margaret M. Chung, National Association of Social Workers, *Intergenerational Effects of Genocidal Disaster among Cambodian Youth*, (Dec. 2000), *available at* http://www.naswnyc.org/di6.html.

administration and greater access to education for all students.

The experience of Boston Asian Youth Essential Service (YES) also shows that integration fosters greater educational access. YES runs an after school drop-in center for Asian youth and works with adolescents from diverse Asian American backgrounds, with a particular focus on lower income youth—ranging from Chinese immigrants in Chinatown to Vietnamese refugees from Boston's Dorchester neighborhood. Many of these students do not attend well-integrated schools. Across these populations, YES has found that inner city Asian American youths face profiling and discriminatory treatment by school officials, such as differential disciplinary treatment and lack of interpretation for limited English proficient youth and families.

For example, YES has found that schools often fail to provide interpretation for meetings with limited English proficient parents, sometimes even when interpretation is explicitly requested. YES has also found that school discipline notices are rarely translated for limited English proficient parents, and that when such parents show up for discipline hearings they rarely—if ever—get translation services despite the weighty nature of such hearings. YES believes that greater integration of public schools in communities that YES serves would bring more capable administration to facilitate these schools' ability to provide adequate interpretation and translation as well as staff training to curb differential treatment and discrimination.

Philadelphia area *Amici* concur that better integrated schools can lead to better, more even-handed treatment of students. Ellen Somekawa of Asian Americans United reports:

> The highly segregated neighborhoods of Philadelphia lead to a high level of racial segregation and inequality in its public schools. This does not benefit Philadelphia's Asian American student population. In particular, segregated schools do not provide a welcoming and healthy learning environment.[37]

These *Amici* have found that schools with a disproportionately low percentage of White children frequently suffer from administrative neglect. The Cambodian Association of Greater Philadelphia (CAGP), which advocates on behalf of Cambodian and other Asian American students in Philadelphia's public school system, has found that their clients often miss up to 60 to 100 classes before any form of school intervention.[38] These *Amici* believe that more integration would bring parents who are better able to call for more attentive administration. This would enhance efforts to detect and address early signs of student truancy, before attendance problems become intractable.

III. LOCAL SCHOOL BOARDS SHOULD BE VESTED WITH BROAD DISCRETION TO PROMOTE INTEGRATION THROUGH RACE CONSCIOUS SCHOOL ASSIGNMENT POLICIES TAILORED TO THEIR COMMUNITIES AND BUDGETS.

Among the arguments advanced by the Petitioners in support of reversal is the claim that the school

---

[37] Statement of Ellen Somekawa, Executive Director, Asian Americans United.

[38] Statement of Rorng Sorn, Program Director, Cambodian Association of Greater Philadelphia.

assignment plans at issue are overly simplistic and do not provide for an individualized holistic review of each student. Through their work, the *Amici* organizations are well aware of the severe budgetary pressures that many school districts face. Consequently, while each school district would undoubtedly love to spend the time and resources on the assignment process that an elite law school spends on its admission process, harsh realities dictate otherwise.[39]

The *Amici* organizations believe that for a school assignment plan to succeed, it is imperative that local school boards be vested with broad discretion in the school assignment process. School districts have different levels of funding and resources available to them, and consequently they are in unique positions to evaluate the feasibility of student assignment plans. Moreover, as discussed throughout this brief, Asian Americans encompass a broad range of ethnicities, with widely different traits and educational needs. The established Chinese or Japanese American communities in the San Francisco area have little in common with the Vietnamese community in the same city, let alone the Hmong in Detroit or the Cambodians in Lowell. Accordingly, a school assignment plan that works for one city may not work for another.

---

[39] For example, the Seattle plan has been criticized by some because it only divides students into two categories: "White" and "Nonwhite," and rather than taking into consideration other factors. *Amici's* position is that Seattle must be given the discretion to determine in its expertise, and within the constraints of the law and its resources, how best to effectuate its school assignment process.

As Judge Kozinski noted in *Parents Involved in Community Schools*:

> To resort to Chief Judge Boudin's words one last time, "we are faced with a local experiment, pursuing plausible goals by novel means that are not squarely condemned by past Supreme Court precedent. The problems that the . . . plan addresses are real, and time is more likely than court hearings to tell us whether the solution is a good one . . . . " I share Judge Boudin's preference for resolving such difficult issues by trial and error in the real world, rather than by experts jousting in the courtroom. When it comes to a plan such as this—a plan that gives the American melting pot a healthy stir without benefiting or burdening any particular group—I would leave the decision to those much closer to the affected community, who have the power to reverse or modify the policy should it prove unworkable. It is on this basis that I would affirm the judgment of the district court.[40]

---

[40] 426 F.3d 1162, 1196 (9th Cir. 2005) (Kozinski, J. concurring) (citation omitted).

IV. CONCLUSION

For the foregoing reasons, the *Amici* organizations respectfully request that the Court rule in favor of the Respondents and affirm the decisions of the Courts of Appeals.

Respectfully submitted,

KENNETH KIMERLING
KHIN MAI AUNG
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, New York
10013
Tel.: (212) 966-5932

MARC WOLINSKY*
RICHARD K. KIM
NELSON O. FITTS
JAMES R. LEVINE
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New
York 10019
Tel.: (212) 403-1000
**Counsel of Record*

APPENDIX

APPENDIX

Asian American Legal Defense and Education Fund (AALDEF)

The Asian American Legal Defense and Education Fund (AALDEF), headquartered in New York City and founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF's educational equity and youth rights project promotes the rights of Asian American students in K-12 public education. AALDEF has an interest in this litigation because its work in the various jurisdictions discussed herein reveals that Asian American students reap myriad benefits from attending integrated public schools.

Asian Americans United (AAU)

Since its founding in 1985, Asian Americans United (AAU) has developed local leadership in Philadelphia, Pennsylvania's Asian community to identify issues of concern and act collectively on their own behalf. AAU has a particular focus on developing youth leadership and struggling for quality public education. AAU initiated the *YS* v. *School District of Philadelphia* lawsuit, brought by the Education Law Center, to give limited English proficient Asian students equal access to Philadelphia public schools. AAU has seen that consideration of racial factors can be an important tool in remediating inequalities in public schools.

Asian Pacific Islander Legal Outreach (APILO)

Asian Pacific Islander Legal Outreach (APILO), founded in 1975, promotes culturally and linguistically appropriate services for the most marginalized segments of the Asian Pacific Islander community in San Francisco and Oakland, California. Based on its work on a variety of social justice issues including youth rights, APILO believes firmly that integrated public schools provide the best education for

Asian Pacific Islander youth and hence has an interest in this litigation.

Asian Pacific Islander Youth Promoting Advocacy and Leadership (AYPAL)

Asian Pacific Islander Youth Promoting Advocacy and Leadership (AYPAL) runs youth-identified and youth-run direct action organizing and arts campaigns for school and community change to improve the lives of Asian Pacific Islander youth in Oakland, California. AYPAL youth have directly benefited from attending integrated public schools. Therefore, AYPAL has a strong interest in the preservation of voluntary desegregation programs in public school districts.

Boston Asian Youth Essential Service (YES)

Boston Asian Youth Essential Service (YES) is dedicated to inspiring Asian youth to discover and actualize their greatest potential, and to this end runs a multi-service drop-in center for the greater Boston area's Asian youth. Through providing these services and supports, YES has found that Asian youth benefit from attending racially integrated K-12 public schools and therefore has an interest in this litigation.

Cambodian Association of Greater Philadelphia (CAGP)

The Cambodian Association of Greater Philadelphia, Inc. (CAGP), founded in 1979, works to improve quality of life for Cambodian Americans in greater Philadelphia by providing services, advocating and empowering them to obtain equal access to social and economic development, as well as to quality healthcare and education. Through this work, CAGP has found that attending racially integrated schools is beneficial to the educational development of Cambodian and other Asian American children.

Chinese for Affirmative Action (CAA)
Chinese for Affirmative Action (CAA), based in San Francisco, California, defends and promotes the civil and political rights of Chinese and Asian Americans within the context of, and in the interest of, advancing multiracial democracy in the United States. Among other things, CAA works to educate the San Francisco Unified School District of the educational needs of Chinese and Asian American students, especially English language learners and those from low-income families. CAA believes racially integrated classrooms are critical to prepare students for success in a multiracial society, and thus is interested in preserving the authority of school districts to create voluntary desegregation programs.

Coalition for Asian American Children and Families (CACF)
The Coalition for Asian American Children and Families (CACF), located in New York City, seeks to improve the quality of life for Asian Pacific American children and families. Among other things, CACF conducts advocacy, produces and disseminates public education materials, and engages in coalition building. Through this work, CACF has found that Asian Pacific American children benefit strongly from attending diverse and integrated public schools and hence has an interest in this litigation.

Coalition for Asian Pacific American Youth (CAPAY)
Founded in 1994, the Coalition for Asian Pacific American Youth (CAPAY) is a youth-run organization that that helps Asian Pacific Islander teens in Boston and the greater Boston area become effective democratic citizens. CAPAY offers workshops in Asian Pacific Islander American history, hosts an annual leadership symposium, and develops innovative and exemplary programs in youth development and civic activism. CAPAY has an interest in

preserving desegregation programs because CAPAY youth have benefited from attending racially diverse schools.

Detroit Asian Youth Project (DAY Project)
The Detroit Asian Youth (DAY) Project is an initiative to develop leadership skills and raise consciousness among Asian American youth in Detroit, Michigan. DAY Project engages youth through community-based projects to promote a greater understanding of Detroit and its Asian American community. As a result of this experience, DAY Project firmly believes that racially diverse public schools improves educational outcomes for all of Detroit's students – including Asian Americans.

Filipinos for Affirmative Action (FAA)
Filipinos for Affirmative Action (FAA), headquartered in Oakland, California, works to build a strong and empowered Filipino community by organizing constituents, developing leaders, providing services, and advocating for policies that promote social and economic justice and equity. FAA has an interest this matter because it runs after school programs for K-12 public school students and strongly believes in the value of diverse classrooms in public education.

Japanese Community Youth Council (JCYC)
Established in 1969, the Japanese Community Youth Council (JCYC) is a multi-service community organization based in San Francisco, California, which offers children and youth a continuum of services from preschool to college. Annually, JCYC programs serve over 6,000 children and youth from all ethnic backgrounds. JCYC has incorporated into its mission the goal of providing leadership in collaborative efforts to foster better relationships and communication among different communities. Based on this value we support all efforts to integrate young people from different backgrounds including in the classroom.

One Lowell
One Lowell is a community-based organization dedicated to improving the life, opportunities and involvement of culturally diverse people in Lowell, Massachusetts. Among other functions, One Lowell provides case management and advocacy to promote the civil rights of immigrant children and parents—including Asian Americans who make up one third of Lowell's public schools. Based on this work, One Lowell strongly believes in the value of racial integration in enhancing the educational experiences of all students, including immigrants and Asian Americans.

Providence Youth Student Movement (PrYSM)
The Providence Youth Student Movement (PrYSM) mobilizes Southeast Asian youth in Providence, Rhode Island in community organizing campaigns addressing among other issues discrimination and inequity in public education. PrYSM has an interest in this matter because its experience has shown that Southeast Asian and other Asian Pacific Islander students reap educational and social benefits from attending racially diverse public schools.

South Asian Youth Action! (SAYA)
South Asian Youth Action! (SAYA), based in New York City, is the first and only United States organization working to develop the skills, talents, and leadership potential of South Asian youth. SAYA! provides programming and advocacy to create broad social and systemic changes positively impacting South Asian and other immigrant youth. SAYA!'s interest in this litigation arises from its belief that South Asian and other immigrant youth benefit strongly from attending racially diverse public schools.

United Chinese Association of Brooklyn (UCA)
The United Chinese Association of Brooklyn (UCA) mobilizes Asian American communities to defend against

anti-Asian discrimination and violence, focusing particularly on helping immigrant students overcome language barriers and develop cross-cultural communication skills to assist in their adjustment to life in the United States. Through its work, UCA has found that attending integrated public schools fosters this adjustment process for immigrant Chinese and Asian students, and thus has a strong interest in preserving desegregation programs in K-12 public education.